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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHNNY ANTHONY HERNANDEZ,

Defendant and Appellant.

H038085

(Santa Clara County

Super. Ct. No. CC815366)

Defendant Johnny Anthony Hernandez appeals from an order denying his motion to correct the abstract of judgment. Defendant pleaded no contest to grand theft (Pen. Code, §§ 484/487, subd. (c)) and false imprisonment by force (Pen. Code, §§ 236/237), and admitted a strike conviction (Pen. Code, §§ 667, subds. (b)-(i), 1170.12). He was sentenced to seven years and four months in state prison.

On August 14, 2008, Debbie Santos reported that someone had just stolen her bicycle. She described the suspect as a Hispanic male, about five feet seven inches tall, stocky build, about 35 years old, with tattoos on his arms and wearing a white tank top and dark pants. While she was at a bus stop, the suspect identified himself as a “northerner,” told her that he was going to take her bicycle, pulled it out of her hands, and rode away. Police officers conducted an in-field lineup and Santos identified defendant as the perpetrator.

Defendant was charged with second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c)). It was also alleged that he had suffered a prior strike conviction (Pen. Code, §§ 667, subds. (b)-(i), 1170.12) and two prior serious felony convictions (Pen. Code, § 667, subd. (a)).

In July 2009, defendant pleaded no contest to grand theft (Pen. Code, §§ 484/487, subd. (c)) and false imprisonment by force (Pen. Code, §§ 236/237) and admitted a strike conviction (Pen. Code, §§ 667, subds. (b)-(i), 1170.12), in exchange for a sentence of seven years and four months and dismissal of the remaining charges and allegations. In October 2009, the court awarded 194 days of presentence credit, which was based on 130 actual days and 64 days of conduct credit pursuant to Penal Code section 4019.

On January 24, 2012, defendant, acting in pro per, filed a motion to correct the abstract of judgment. He argued that he was entitled to additional presentence custody credit based on retroactive application of the January 2010 amendment to Penal Code section 4019.

On February 8, 2012, the superior court issued an order denying the motion for additional custody credit. The superior court reasoned that defendant's convictions and sentence occurred prior to the amendment to Penal Code section 4019 and concluded that the amendment was not retroactive. The superior court further noted that even if the amendment was applicable to defendant, he was not entitled to any increased credit because he had admitted that he had a prior serious felony conviction.

Appointed appellate counsel has filed an opening brief which states the case and the facts but raises no issues. Defendant was notified of his right to submit written argument on his own behalf but has failed to avail himself of the opportunity. Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we have reviewed the entire record and have concluded that there are no arguable issues on appeal.

The judgment is affirmed.

Mihara, J.

WE CONCUR:

Premo, Acting P. J.

Márquez, J.